

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

April 1, 2003

IN RE:

**GENERIC DOCKET TO ESTABLISH UNE PRICES
FOR LINE SHARING PER FCC 99-355, AND RISER
CABLE AND TERMINATING WIRE AS ORDERED
IN TRA DOCKET 98-00123**

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**DOCKET NO.
00-00544**

ORDER GRANTING JOINT MOTION TO EXTEND STAY

This matter came before Chairman Sara Kyle, Director Pat Miller and Director Ron Jones of the Tennessee Regulatory Authority (the "Authority"), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on December 2, 2002 for consideration of the *Joint Motion to Extend Authority Stay* ("*Joint Motion*") filed by BellSouth Telecommunications, Inc. ("BellSouth"), United Telephone-Southeast, Inc. ("Sprint/United"), AT&T Communications of the South Central States ("AT&T"), and DIECA d/b/a COVAD Communications Company ("Covad") on November 22, 2002. The *Joint Motion* requests that the Authority extend the previously ordered stay of its April 3, 2002 *First Interim Order* directing BellSouth and Sprint/United to "install, for the CLECs' use, dual-purpose line cards in the fiber-fed Next Generation DLC equipment in the remote terminal under nondiscriminatory terms and at just and reasonable rates."¹

¹ *Order on Petition for Stay and Requests for Reconsideration and Clarification*, pp. 27-29 (June 27, 2002).

Background

On December 9, 1999, the Federal Communications Commission ("FCC") released its "*Line Sharing Order*."² In the *Line Sharing Order*, the FCC ordered the unbundling of the high frequency portion of copper loop spectrum so that providers of digital subscriber line ("DSL") service could obtain access to it as an unbundled network element ("UNE").

On April 3, 2002, the Authority issued the *First Interim Order*³ containing decisions rendered by Chairman Sara Kyle and Directors H. Lynn Greer, Jr. and Melvin J. Malone. The *First Interim Order* addressed numerous outstanding issues including Issue No. 20 regarding whether the Authority should require incumbent local exchange carriers ("ILECs") to install, for the use of competitive local exchange carriers ("CLECs"), dual-purpose line cards in the digital loop carrier system. In the *First Interim Order*, the Directors unanimously voted to order BellSouth and Sprint/United to install, for the CLECs' use, dual-purpose line cards in the fiber-fed Next Generation DLC equipment in the remote terminal under nondiscriminatory terms and at just and reasonable rates.⁴

On April 10, 2002, BellSouth filed a petition seeking a stay of the *First Interim Order*. In this petition BellSouth requested that the Authority stay that portion of the *First Interim Order* relating to Issue No. 20.⁵

At a regularly scheduled Authority Conference held on May 21, 2002 the Directors deliberated the merits of BellSouth's petition for stay. The Directors subsequently voted to grant

² In the *Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order in CC Docket No. 98-147 and Fourth Report and Order in CC Docket No. 96-98, 14 F.C.C.R. 20912 (1999).

³ The April 3, 2002 Order was originally titled "*First Initial Order*" as a result of an inadvertent error. An erratum was filed on June 27, 2002, which re-titled the order "*First Interim Order*. From this point forward the Order shall be referred to as the *First Interim Order*.

⁴ *First Interim Order*, p. 43 (April 3, 2002).

⁵ *BellSouth Telecommunications, Inc.'s Petition for Stay of TRA First Initial Order of April 3, 2002*, p. 1 (June 19, 2002) (redacted version).

BellSouth's petition in part and stayed for a period of six (6) months the decisions of the Authority memorialized in the *First Interim Order* relating to Issue No. 20. BellSouth and Sprint/United were ordered to comply with the *First Interim Order* in full at the conclusion of the six month period.⁶

On May 24, 2002, the United States Court of Appeals for the D. C. Circuit issued its decision in *United States Telecom Ass'n v. FCC* (the "*USTA decision*") vacating the FCC's *Line Sharing Order* and staying its vacatur of the FCC rule until January 3, 2003, pending action by the FCC on remand.⁷ On May 29, 2002 Sprint/United filed a *Joint Motion to Suspend* asking the TRA to suspend the *First Interim Order* in light of the D.C. Circuit's decision.

The terms of the former Directors of the Authority, Chairman Sara Kyle, and Directors H. Lynn Greer, Jr. and Melvin J. Malone, expired on June 30, 2002. Chairman Kyle was re-appointed and commenced a new term as a Director of the Authority on July 1, 2002. Deborah Taylor Tate, Pat Miller, and Ron Jones began terms as Directors on July 1, 2002. Pursuant to the requirements of the amended provisions of Tenn. Code Ann. § 65-1-204, a three member voting panel consisting of Chairman Kyle, Director Miller and Director Jones was randomly selected and assigned to this docket.

On November 22, 2002, BellSouth, Sprint/United, AT&T, and Covad filed the *Joint Motion*. On November 27, 2002, Citizens Telecommunications Company of Tennessee, LLC ("Citizens") filed a letter advising the Authority that Citizens supported the *Joint Motion*. No filings were made in opposition to the *Joint Motion*.

At the December 2, 2002 Authority Conference, the Directors voted unanimously to extend the stay of the Authority's *First Interim Order* as to Issue No. 20 until sixty (60) days

⁶ *Order on Petition for Stay and Requests for Reconsideration and Clarification*, p. 7 (June 27, 2002).

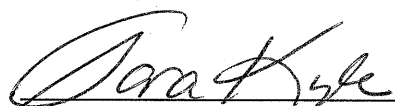
⁷ *U.S. Telecom Ass'n v. F.C.C.*, 290 F.3d 415, 430 (D.C. Cir. 2002).

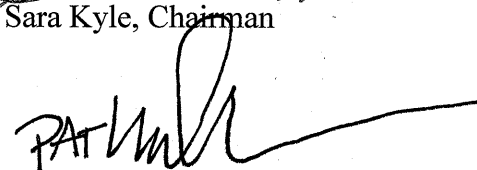
after the FCC takes formal action as directed by the Court of Appeals for the D.C. Circuit in the *USTA decision*. The Directors also voted to hold in abeyance the *Joint Motion to Suspend* filed by Sprint/United on May 29, 2002, in which Sprint/United requested that the Authority suspend its *First Interim Order* and its decision on reconsideration and clarification.

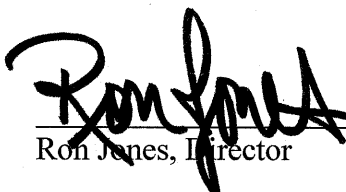
IT IS THEREFORE ORDERED THAT:

1) The *First Interim Order* is stayed as to Issue No. 20 until sixty (60) days after the Federal Communications Commission takes formal action on its *Line Sharing Order* as mandated by the United States Court of Appeals for the D.C. Circuit in *United States Telecom Association v. FCC*, 290 F.3d 415 (2002).

2) The *Joint Motion to Suspend* filed by United Telephone-Southeast, Inc. and Sprint Communications Company L.P. shall be held in abeyance pending further orders of the Authority.


Sara Kyle, Chairman


Pat Miller, Director


Ron Jones, Director